

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2059 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SANUBEN KANCHA TAMANG

Versus

STATE OF GUJARAT

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Appearance:

Ms. Banna Dutta, Advocate for Mr. K.D. Parmar,  
Advocate for Petitioner  
Mr. D. P. Joshi, A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for  
Advocate Mr. K.D. Parmar for the petitioner and learned  
A.G.P. Mr. D.P. Joshi for the respondents nos.1, 2 and  
3.

The detention order dated 29-1-1999 passed by the

respondent no.1-Commissioner of Police, Surat City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "A" inter alia indicate that offence vide CRs no.30, 35 of 1999 was registered against the petitioner for offences made punishable under Secs.3,4,6 and 7 of the Immoral Traffic Act, 1956 on 6-1-1999. The petitioner was arrested in the said case. Further more on 12-1-1999 when a raid was conducted at room nos.5, 6 and 7 of Noorjehan building, the petitioner was found with five prostitutes and eight customers on the spot and offence was registered for the same. The grounds also indicate that two witnesses on assurance of their anonymity have supplied information pertaining to incidents dated 10-1-1999 and 23-1-1999 respectively whereby it is alleged that the petitioner with her accomplice have been causing an atmosphere of terror amongst the residents of that area by using force and violence.

3. That in consideration of the said material, the respondent no.2 has come to the conclusion that the petitioner is an immoral traffic offender within the meaning of Section 2(g) of the Act. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity which affects the maintenance of public order, the detention order is necessary, and hence, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the petitioner was released on bail in one of the cases on certain conditions. However, the detaining authority while formulating the grounds of detention has failed to consider the aspect of less drastic remedy of opposing and cancellation of bail available under Sec.437(5) of the Cr.P.C. which shows non application of mind and as such the subjective satisfaction having been vitiated the impugned order is invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that

non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

6. In the instant case also, on scrutiny of the grounds of detention, it clearly appears that the detaining authority while considering the availability of alternative remedy appears to have failed to consider the aspect of less drastic remedy of opposing and cancellation of bail granted to the petitioner in a pending case. This discloses the non application of mind on the part of the detaining authority which has vitiated the subjective satisfaction rendering the impugned order invalid.

7. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 29-1-1999 passed by the respondent no.2-Police Commissioner, Surat City against the petitioner is hereby quashed and set aside. The petitioner-detenu-Sanuben Kancha Tamang is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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